

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

THE DETROIT EDISON COMPANY,
a Michigan Corporation,

Plaintiff,

v.

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY,
and WAYNE COUNTY DEPARTMENT OF
ENVIRONMENT,

Defendants/Counter-Plaintiffs,

and

AMERICAN LUNG ASSOCIATION OF
MICHIGAN, CITIZENS ENVIRONMENTAL
ALLIANCE OF
SOUTHWESTERN ONTARIO, CREEKSIDE
COMMUNITY DEVELOPMENT
CORPORATION, MICHIGAN
ENVIRONMENTAL COUNCIL, MICHIGAN
UNITED CONSERVATION CLUBS,

Intervenors,

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE DETROIT EDISON COMPANY,

Defendant.

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CLERK OF COURT
U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

Case Nos. 98-CV-74129 and
99-CV-70171

HON. JOHN FEIKENS

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CLERK'S OFFICE
U.S. DISTRICT COURT

STIPULATED SETTLEMENT ORDER

WHEREAS, the United States, on behalf of the United States Environmental Protection Agency (“U.S. EPA”), the State of Michigan, on behalf of the Michigan Department of Environmental Quality (“MDEQ”), Wayne County, the Intervenor listed above (the American Lung Association of Michigan, the Citizens Environmental Alliance of Southwestern Ontario, Creekside Community Development Corporation, Michigan Environmental Council, and the Michigan United Conservation Clubs) (collectively, the “Environmental Intervenor”), and The Detroit Edison Company (“Detroit Edison”) (collectively, the “Parties,” and singularly, a “Party”) hereby stipulate to the settlement order set forth below to settle the above actions asserting claims under the Clean Air Act, 42 U.S.C. § 7401 et seq. (the “Clean Air Act”), the Michigan State Implementation Plan, 40 C.F.R. Part 52, Subpart X, Part 55 of the Michigan Natural Resources and Environmental Protection Act (“NREPA”), Mich. Comp. Laws § 324.5501 et seq., Part 17 of NREPA, Mich. Comp. Laws § 324.1701 et seq., and the Wayne County Air Pollution Control Ordinance of 1985 (“the Wayne County Ordinance”), and other claims stated in the Parties’ respective complaints and counterclaims regarding Detroit Edison’s Conners Creek Power Plant (the “Plant”) (the “Actions”) and ask that the Court enter this agreement as a Stipulated Settlement Order upon further written notice from the United States that such action is appropriate after an opportunity for public comment upon the proposed settlement in accordance with 28 C.F.R. § 50.7.

WHEREAS, no part of this Stipulated Settlement Order shall constitute or be construed

as an admission by any Party or evidence of : (a) liability with respect to any issue dealt with in this Stipulated Settlement Order or any matter alleged in the pleadings in these Actions; or (b) any factual allegations or legal conclusions stated or implied in the pleadings in these Actions. Nothing in this Stipulated Settlement Order is intended to create any rights in, or grant any cause of action to, any person not a Party to this Stipulated Settlement Order.

NOW, THEREFORE, before the taking of any testimony, without adjudication or admission of any issue of fact or law, without any admission as to any of the violations alleged in any of the pleadings in these Actions, and upon consent and agreement of the Parties, it is hereby STIPULATED, AGREED, ORDERED, AND ADJUDGED:

1. This Court has jurisdiction over the subject matter of these Actions pursuant to 28 U.S.C. §§ 1331, 1345 and 1355; and Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b). This Court also has jurisdiction pursuant to the removal statute, 28 U.S.C. § 1446, and has supplemental jurisdiction over the state law claims because they are so related to the Clean Air Act claims that they form part of the same case or controversy. 28 U.S.C. § 1367(a). This Court has personal jurisdiction over the Parties.

2. This Stipulated Settlement Order shall apply to and be binding upon the United States, including U.S. EPA, the State of Michigan, including MDEQ, Wayne County, including the Wayne County Department of the Environment, the Environmental Intervenors, and Detroit Edison, and their respective successors and assigns.

3. Within thirty (30) days after entry of this Stipulated Settlement Order, Detroit Edison shall pay to the United States a civil penalty of \$135,000 by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with

instructions provided to Detroit Edison by the Financial Litigation Unit of the United States Attorney's Office for the Eastern District of Michigan and shall reference the civil action number and DOJ File Number 90-5-2-1-06276. Failure to timely pay the civil penalty shall subject Detroit Edison to interest on any such overdue amount accruing from the date payment is due until the date payment is made at the rate prescribed by 28 U.S.C. § 1961. Any such interest owed by Detroit Edison to the United States shall be added to and paid with the \$135,000 EFT payment required by this paragraph.

4. Within thirty (30) days after entry of this Stipulated Settlement Order, Detroit Edison shall pay a settlement amount of \$135,000 to the General Fund of the State of Michigan for the State of Michigan's claims for civil penalties, costs, and attorney fees in these Actions. Detroit Edison shall make the payment required by this paragraph by bank cashier's check or certified check made payable to the "State of Michigan" and delivered to the Michigan Department of Environmental Quality, Cashier's Office, P.O. Box 30657, 300 S. Washington Square, Suite 457, Lansing, MI 48909-8157. In order to ensure proper credit, all payments made to the State of Michigan pursuant to this Stipulated Settlement Order shall include the Agreement Identification No. AQD3091 on the face of the check. Failure to timely pay the settlement amount shall subject Detroit Edison to interest on any such overdue amount accruing from the date payment is due until the date payment is made at the rate prescribed by Mich. Comp. Laws § 600.6013. Any such interest owed by Detroit Edison to the State of Michigan shall be added to and paid with the \$135,000 payment required by this paragraph.

5. Within thirty (30) days after entry of this Stipulated Settlement Order, Detroit Edison shall pay a settlement amount of \$135,000 to Wayne County for Wayne County's claims

for civil penalties, costs, and attorney fees in these Actions. Detroit Edison shall make the payment required by this paragraph by bank cashier's check or certified check made payable to the "County of Wayne" and delivered to the Director, Department of Environment, Air Quality Management Division, 640 Temple Street, Suite 700, Detroit, MI 48201. In order to ensure proper credit, all payments made to Wayne County pursuant to this Stipulated Settlement Order shall include the Civil Action No. 98-CV-74129 and Wayne County File No. 0027-98 on the face of the check. Failure to timely pay the settlement amount shall subject Detroit Edison to interest on any such overdue amount accruing from the date payment is due until the date payment is made at the rate prescribed by Mich. Comp. Laws § 600.6013. Any such interest owed by Detroit Edison to Wayne County shall be added to and paid with the \$135,000 payment required by this paragraph.

6. Within thirty (30) days after entry of this Stipulated Settlement Order, Detroit Edison shall pay a settlement amount of \$45,000 to the Environmental Intervenors for the Environmental Intervenors' claims for attorney fees and costs in these Actions, but not as a civil or other penalty. Detroit Edison shall make the payment required by this paragraph by bank cashier's check or certified check made payable to the "Environmental Law and Policy Center of the Midwest" and delivered to Executive Director, Environmental Law and Policy Center, 35 East Wacker, Suite 1300, Chicago, IL 60601. Failure to timely pay such amount to the Environmental Intervenors shall subject Detroit Edison to interest on any such overdue amount accruing from the date payment is due until the date payment is made at the rate prescribed by 28 U.S.C. § 1961. Any such interest owed by Detroit Edison to the Environmental Intervenors shall be added to and paid with the \$45,000 payment required by this paragraph.

7. Detroit Edison shall provide notice of all payments under Paragraphs 3, 4, 5, and 6 of this Stipulated Settlement Order to counsel of record for the United States, the State of Michigan, Wayne County, and the Environmental Intervenors at the time it makes such payments and, for all payments made to the United States, Detroit Edison shall also provide notice to U.S. Environmental Protection Agency - Region 5, P.O. Box 70753, Chicago, Illinois 60673.

8. This Stipulated Settlement Order resolves all of the United States' civil claims for liability for civil penalties and declaratory and injunctive relief arising from violations at the Plant, through the date of entry of this Stipulated Settlement Order, of (1) the Prevention of Significant Deterioration and Non-Attainment provisions of Parts C and D of the Clean Air Act and the implementing regulations at 40 C.F.R. §§ 51.160 -.166 and 52.21, (2) Mich. Admin. Code r. 336.1201 and r. 336.1221 of the Michigan State Implementation Plan as approved on May 6, 1980 (45 Fed. Reg. 29790), or (3) New Source Performance Standards codified at 40 C.F.R. Part 60, Subpart A and Subpart Da, that:

A. are alleged in its Complaint filed January 15, 1999, or in the Notice of Violation ("NOV") and Finding of Violation ("FOV") issued by U.S. EPA on August 26, 1998, regarding this matter, or

B. could have been alleged by the United States in its Complaint filed January 15, 1999, or in the NOV and FOV issued on August 26, 1998.

9. This Stipulated Settlement Order resolves all of the State of Michigan's civil claims for liability arising from any and all violations alleged in the counterclaims filed by the State of Michigan on August 28, 1998, in the NOV issued by MDEQ on July 16, 1998 (the "MDEQ NOV"), or in the Notice of Intent to Sue, dated September 2, 1998 (the "Michigan

Notice of Intent”), or that could have been alleged under the Clean Air Act, 42 U.S.C. § 7401 et seq., Part 55 of NREPA, Mich. Comp. Laws § 324.5501 et seq., Part 17 of NREPA, Mich. Comp. Laws § 324.1701 et seq., or common law causes of action arising from air emissions based upon the facts, transactions or occurrences alleged by the State of Michigan in the aforementioned counterclaims, MDEQ NOV or Michigan Notice of Intent, including, but not limited to, liability for civil penalties, attorney fees, and costs and for declaratory, injunctive or other relief, through the date of entry of this Stipulated Settlement Order.

10. This Stipulated Settlement Order resolves all of Wayne County’s civil claims for liability arising from any and all violations alleged in the counterclaims filed by Wayne County on August 26, 1998, in the NOV issued by Wayne County on July 16, 1998 (the “Wayne County NOV”), or in the Notice of Intent to Sue, dated September 4, 1998 (the “Wayne County Notice of Intent”), or that could have been alleged under the Clean Air Act, 42 U.S.C. § 7401 et seq., Part 55 of NREPA, Mich. Comp. Laws § 324.5501 et seq., Part 17 of NREPA, Mich. Comp. Laws § 324.1701 et seq., the Wayne County Ordinance, or common law causes of action arising from air emissions based upon the facts, transactions or occurrences alleged by Wayne County in the aforementioned counterclaims, Wayne County NOV or Wayne County Notice of Intent, including, but not limited to, liability for civil penalties, attorney fees, and costs and for declaratory, injunctive or other relief, through the date of entry of this Stipulated Settlement Order.

11. This Stipulated Settlement Order resolves all of the Environmental Intervenors’ civil claims for liability for civil penalties, attorney fees, costs, and declaratory and injunctive relief arising from violations at the Plant, through the date of entry of this Stipulated Settlement

Order, of (1) the Prevention of Significant Deterioration and Non-Attainment provisions of Parts C and D of the Clean Air Act and the implementing U.S. EPA regulations and provisions of the Michigan State Implementation Plan, (2) the Renewable Operating Permit provisions in Title V of the Clean Air Act Amendments of 1990, 42, U.S.C. § 7661 et seq. and the implementing U.S. EPA and MDEQ regulations, (3) the New Source Performance Standard provisions of the Clean Air Act and the implementing U.S. EPA regulations, including 40 C.F.R. Part 60, Subpart A and Subpart Da, or (4) the Acid Rain Program provisions of Title IV of the Clean Air Act Amendments of 1990, 42 U.S.C. § 7651 et seq. and the implementing U.S. EPA regulations, that:

A. are alleged in the Intervenor's Complaint filed November 30, 1998, or

B. could have been alleged by the Environmental Intervenor in their Complaint filed November 30, 1998.

12. This Stipulated Settlement Order resolves, with prejudice, and without costs or attorney fees to any Party, all civil claims of Detroit Edison in the civil action numbered 98-CV-74129 (E.D. Mich.), and in the Contested Case pending before MDEQ relating to the Plant; provided, however, that the resolution of the Contested Case shall not preclude any Party from raising any legal argument in any subsequent administrative or judicial proceeding not involving the reactivation of the Plant in 1998. Within 15 days after entry of this Stipulated Settlement Order, Detroit Edison and MDEQ shall sign and file with the MDEQ Office of Administrative Hearings the Stipulation of Settlement of Contested Case, attached hereto as Attachment A. MDEQ shall provide copies of the entered Stipulation and any subsequent related administrative order to all counsel of record in these actions promptly upon receipt thereof from

the MDEQ Office of Administrative Hearings.

13. This Stipulated Settlement Order does not limit or affect the rights of the Parties against any third parties. This Stipulated Settlement Order does not apply to any claim(s) of alleged criminal liability, which are reserved, and as to which Detroit Edison reserves all of its rights, claims, and defenses.

14. The Parties agree and acknowledge that final approval by the United States and entry of this Stipulated Settlement Order is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Stipulated Settlement Order in the Federal Register, an opportunity for public comment, and the right of the United States to withdraw or withhold its consent if the comments disclose facts or considerations which indicate that the Stipulated Settlement Order is inappropriate, improper, or inadequate.

15. By entering into this Stipulated Settlement Order, Detroit Edison does not admit any liability to the United States, the State of Michigan, Wayne County, or the Environmental Intervenors arising out of the facts, transactions or occurrences alleged in the complaints, the NOV's or FOV, notices of intent to sue, or counterclaims related to the Actions, and Detroit Edison reserves all of its rights, claims, and defenses in connection therewith.

16. This Court shall retain jurisdiction over these Actions and the Parties for the purpose of enforcing this Stipulated Settlement Order.

AS STIPULATED AND AGREED TO BY THE PARTIES,

IT IS SO ORDERED AND ADJUDGED THIS 3rd DAY OF January, ~~2000~~ ²⁰⁰¹.

JOHN FEIKENS

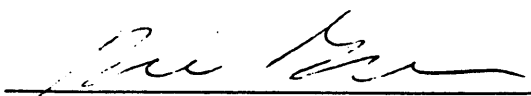
HONORABLE JOHN FEIKENS
UNITED STATES DISTRICT JUDGE


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THE UNDERSIGNED PARTIES enter into this Stipulated Settlement Order in the matter of Detroit Edison v. MDEQ, et al. / United States v. Detroit Edison, Civil Action Nos. 98 CV 74129 and 99 CV 70171 (E.D. Mich.), relating to the Conners Creek Power Plant.

FOR THE UNITED STATES OF AMERICA

Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice


Bruce Gelber, Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

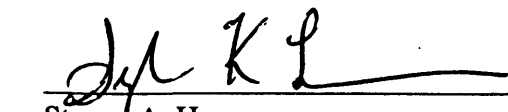

Leslie E. Lehnert
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Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
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Washington, DC 20044-7611
202/514-1761

Saul A. Green
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Assistant United States Attorney
211 W. Fort St.
Suite 2300
Detroit, MI 48226-3211

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For U.S. EPA:

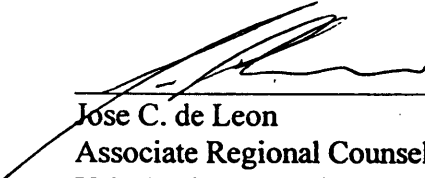


Steven A. Herman
Assistant Administrator for Office of Enforcement
and Compliance Assurance
U.S. Environmental Protection Agency
Washington, D.C.

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For U.S. EPA Region 5


Francis X. Lyons
Regional Administrator, Region 5
U.S. Environmental Protection Agency
77 West Jackson Blvd.
Chicago, Illinois 60604


Jose C. de Leon
Associate Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Blvd.
Chicago, Illinois 60604

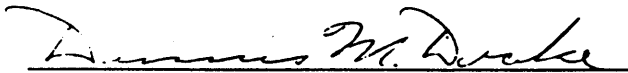
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For the State of Michigan and MDEQ:

JENNIFER M. GRANHOLM,
Attorney General



John Fordell Leone (P38938)
Assistant Attorney General
Natural Resources and
Environmental Quality Division
State of Michigan,
Attorneys for Defendant/Counter-
Plaintiff, MDEQ,
300 South Washington Square
Knapps Office Centre #315
Lansing, MI 48913
(517) 373-7540



Dennis M. Drake, Chief
Air Quality Division
Department of Environmental Quality
State of Michigan

THE UNDERSIGNED PARTIES enter into this Stipulated Settlement Order in the matter of
Detroit Edison v. MDEQ, et al. / United States v. Detroit Edison, Civil Action Nos. 98 CV
742129 and 99 CV 70171 (E.D. Mich.), relating to the Conners Creek Power Plant.

For Wayne County:

County of Wayne
Corporation Counsel

By: Edward Ewell Jr. by permission
Edward Ewell, Jr. (P38962) BA
Mary Rose Macmillan (P32685)
Attorneys for Defendant/Counter-Plaintiff
415 Clifford Street, Seventh Floor
Detroit, Michigan 48226
(313) 224-6678

As to form only:

Seyburn, Kahn, Ginn,
Bess and Serlin, P.C.

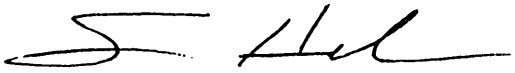
By: Beth S. Gotthelf
Beth S. Gotthelf (P38951)
Co-Counsel for the County of Wayne
2000 Town Center Suite 1500
Southfield, MI 48075
(248) 351-3590

Wayne County Department of Environment
Air Quality Management Division

By: Wendy Barrett
Wendy Barrett, Director
640 Temple, Suite 700
Detroit, MI 48201
(313) 833-3528

THE UNDERSIGNED PARTIES enter into this Stipulated Settlement Order in the matter of Detroit Edison v. MDEQ, et al. / United States v. Detroit Edison, Civil Action Nos. 98 CV 74129 and 99 CV 70171 (E.D. Mich.), relating to the Conners Creek Power Plant.

For the American Lung Association of Michigan, the Citizens Environmental Alliance of Southwestern Ontario, Creekside Community Development Corporation, Michigan Environmental Council, and the Michigan United Conservation Clubs, collectively known as the Environmental Intervenors:



Susan Hedman
Environmental Law & Policy Center
35 East Wacker; Suite 1300
Chicago, Illinois 60601
312.749.3400 (tel)
312. 332.1580 (fax)
Michigan Bar No. P46552

THE UNDERSIGNED PARTY enters into this Stipulated Settlement Order in the matter of Detroit Edison v. MDEQ, et al. / United States v. Detroit Edison, Civil Action Nos. 98 CV 742129 and 99 CV 70171 (E.D. Mich.), relating to the Conners Creek Power Plant.

FOR THE DETROIT EDISON COMPANY

Date: Sept. 25, 2000 By: William R. Roller
Name of Officer

William R. Roller
Signature of Officer

Vice President - Power Generation
Title

2000 Second Avenue, Detroit, MI
Address

313 - 235-9657
Telephone Number

If different from above, the following is the name and address of The Detroit Edison Company's agent for service and the name and address of The Detroit Edison Company's counsel. Counsel may act as agent for service.

Attorney and agent for service

Joseph M. Polito
Honigman Miller Schwartz and Cohn
2290 First National Building
Detroit, MI 48226
(313) 465-7514

The Detroit Edison Company shall notify the United States Department of Justice of any change in the identity or address of The Detroit Edison Company, its agent for service, or its counsel.

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